

December 21, 1990

MEMORANDUM

TO: The Honorable Russel S. Nagata
Comptroller
State of Hawaii

FROM: Martha L. Young, Staff Attorney

SUBJECT: Disclosure of Escheated Warrants Reports

This is in response to your letter dated December 18, 1989, requesting an advisory opinion regarding the disclosure of the Escheated Warrants Reports issued by the Department of Accounting and General Services ("DAGS").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), information contained in the Escheated Warrants Reports, issued by DAGS, is subject to public inspection and copying.

BRIEF ANSWER

Yes. Under the UIPA, most of the information contained in the Escheated Warrants Reports, issued by DAGS, is subject to public inspection and copying. However, the titles of each report and the identifying letters at the beginning of each warrant number must first be deleted, to protect an individual's privacy interest and information made confidential by statute. We note that this opinion applies only to five of the eight Escheated Warrants Reports, the requester having excluded reports pertaining to payments made to state employees, to individuals as welfare benefits, and to individuals as social services benefits.

FACTS

A private company has requested copies of all unpaid or uncashed checks issued by the State from January 1984 through December 1988. By separate letter, the company has recently narrowed its request by excluding checks issued to state employees, checks representing welfare benefits to individuals, and checks representing payment of social services to individuals. Since there are virtually no unpaid "checks" issued by the State of Hawaii, this opinion letter shall focus on unpaid "warrants."¹

Uncashed warrants for the previous fiscal year are listed on the Escheated Warrants Reports, issued annually by DAGS (see Exhibit "A" for an excerpt of a report). The uncashed warrants are deemed void and the money reverts to the State's general fund. Payees (or their assignees or representatives) may file claims with the comptroller for up to ten years after the money escheats to the general fund. Haw. Rev. Stat. . 40-68 (1985). This money is transferred to the general fund pursuant to the following statute:

.40-68 Nonpresentment of warrants. Any warrant drawn upon the state treasury shall be presented at the treasury for payment before the close of the fiscal year next after the fiscal period in which it has been issued. All warrants not so presented within such time shall be deemed to have been paid, and any money held at the expiration of such time in a special fund or account for the payment of such warrants shall thereupon be transferred to the general fund;

Haw. Rev. Stat. . 40-68 (1985) (emphasis added).

¹Section 40-51, Hawaii Revised Statutes, provides that "no money shall be drawn from or out of the treasury except upon warrants," except for state debt bond redemption and interest coupons, interest on overdue warrants, drafts against special deposits, and drafts for the Legislature's and the Judiciary's expenses. It is the State's uncashed warrants that are the subject of this opinion letter, and not its uncashed checks or drafts, because, according to DAGS, there virtually are no checks or drafts that remain uncashed.

The Escheated Warrants Reports consist of computer printouts containing the warrant number, issue date, amount, and payee. There are eight separate reports printed each year, corresponding to the source of funds or type of payment the warrant represents. The eight Escheated Warrants Reports and a brief description of each are listed below. The first four report titles represent separate state funds that the warrants are drawn from, and the second four represent different types of payments.

1. General Fund Escheated Warrants Report. Includes payments for any type of expense which is paid from the State's general fund. This list includes some salary payments to individuals (e.g., "emergency" salaries, late hires that missed payroll reporting dates, jury duty payments, Hawaii Housing Authority rent supplements, and replacements for welfare checks that jam in the check machine).
2. Trust Fund Escheated Warrants Report. Includes payments of money which the State has been holding in "trust," usually in the form of temporary deposits, such as state income tax refunds, medicare premium refunds to government retirees, and bid deposits. This list may also include operating expenses for some state programs, as a supplement to regular funding.
3. Bond Fund Escheated Warrants Report. Includes payments for any type of state expense paid for by state-issued bonds, for example, large construction jobs. This list includes payments to contractors and consultants, as well as for blueprints, supplies, and any other expense related to the project. We are informed by DAGS that this list probably does not include payment of any state employee salaries.
4. Special Fund Escheated Warrants Report. Includes payments for any type of state expense for which the monetary source is a special type of revenue (e.g., airport operating expenses, funded partly by concession and landing fees and partly by fuel tax; public hospitals, funded partly by HMSA and Medicaid payments; Hawaii Housing Authority, funded partly by rental income; Hawaiian Home Lands and the Department of Land and Natural Resources, funded partly by lease rents; and the Department of Transportation, Harbors Division, funded partly by wharfage). This list also includes expenses

paid for by federal grant monies, and may include replacements for unemployment checks that jam in the check machine.

5. Payroll Clearance Fund Escheated Warrants Report. Includes payments to state employees and their assignees.

6. Welfare Escheated Warrants Report. Includes payments to individuals for social service assistance.

7. Unemployment Compensation Fund Escheated Warrants Report. Includes payments to individuals for unemployment compensation benefits.

8. Employment Security Fund Escheated Warrants Report. Includes payments for any type of expense related to the operation of the State Employment Service, including but not limited to, payments to vendors, supplies, rent, equipment maintenance, and employee travel reimbursements. This list also includes payments made from approximately 20 different federally-funded programs (e.g., On-the-Job-Training payments to employers, child care reimbursements to qualified individuals, and federal training program reimbursements).

The warrant number for each Escheated Warrants Report entry begins with a letter corresponding to the specific report (the warrant numbers of the entries in the General Fund Escheated Warrants Report all begin with the letter "G," the warrant numbers in the Trust Fund Escheated Warrants Report all begin with "T," and so on). The significance of this identifying letter will be further explained in the discussion which follows.

After DAGS prints the eight annual reports listing uncashed warrants for the preceding fiscal year, this information is deleted from the computer and maintained only on paper lists.² If a payee (or a payee's assignee, personal representative, or other lawfully entitled person) later files a claim for and receives the money, a notation is made on the paper list. DAGS does not issue any updated computer printouts of the uncashed warrants.

²The Escheated Warrants Reports for uncashed Unemployment Compensation and Employment Security warrants are sent to the Department of Labor and Industrial Relations, which maintains them.

The approximate totals of unpaid warrants that have escheated to the General Fund for the past several years are as follows:

<u>Year</u>	<u>Total Unpaid Warrants</u>
1989	\$508,000
1988	\$407,000
1987	\$336,000
1986	\$294,000
1985	\$236,000
1984	\$290,000
1983	\$349,000
1982	\$265,000

No attempts are made by the State to locate the payees of uncashed warrants after the funds have escheated to the general fund.³

DISCUSSION

Because the requester has excluded from its request checks issued to state employees, checks representing welfare benefits to individuals, and checks representing payment of social services benefits to individuals, we need not address accessibility to the following three reports: Payroll Clearance Fund Escheated Warrants Report, Welfare Escheated Warrants Report, and Unemployment Compensation Fund Escheated Warrants Report. We will thus limit our legal analysis to the information contained in the remaining five reports: General Fund Escheated Warrants Report, Trust Fund Escheated Warrants Report, Bond Fund Escheated Warrants Report, Special Fund Escheated Warrants Report, and Employment Security Fund Escheated Warrants Report.

The UIPA provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1989). In addition to this general rule of disclosure, section 92F-12(a) lists several categories of records that, notwithstanding "[a]ny provision to the contrary," are specifically made public.

³We note that the unpaid monies represented by the warrants listed on both the Unemployment Compensation Fund and the Employment Security Fund Escheated Warrants Reports do not escheat to the State, but rather to their originating funds in the federal treasury in Washington, D.C. The State does attempt to locate the larger payees on these two lists.

Examples of such information include government purchasing information, government loan information, and government contract payments. Haw. Rev. Stat. . 92F-12(a)(3), (8), and (10) (Supp. 1989).

Section 92F-13, Hawaii Revised Statutes, lists several exceptions to the UIPA's general rule of disclosure, including the following:

.92F-13 Government records; exceptions to general rule. This chapter shall not require disclosure of:

(1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

. . . .

(4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure;

Haw. Rev. Stat. . 92F-13 (Supp. 1989) (emphases added).

The personal privacy exception involves a balancing of the individual's⁴ privacy interests against the public interest in disclosure. According to the UIPA, "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. . 92F-14(a) (Supp. 1989). "If the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

⁴Under the UIPA, only individuals, defined as "natural persons" in section 92F-3, Hawaii Revised Statutes, have protectible privacy interests.

Previous OIP opinion letters have found that individuals may have a significant privacy interest in personal information such as a name. See OIP Op. Ltr. Nos. 89-4 (Nov. 9, 1989) and 89-16 (Dec. 27, 1989). This privacy interest is heightened when combined with other personal details, especially financial information. See Aronson v. United States Dep't of Housing and Urban Dev., 822 F.2d 182 (1st Cir. 1987) at 186 ("[t]he privacy interest becomes more significant . . . when names and addresses are combined with financial information").

The fourth exception to the UIPA's general rule of disclosure, for records "protected from disclosure" by state or federal law, has previously been found to apply to state tax return information. See OIP Op. Ltr. No. 89-3 (Nov. 3, 1989).⁵ Such tax "return information" thus made confidential by law includes tax refund payments. Id.

Considering the foregoing discussion of mandated disclosure on the one hand and protected interests on the other, it is apparent that four of the five Escheated Warrants Reports under discussion contain both (1) payments specifically made public by the UIPA, and (2) payments in which there is a significant privacy interest or which are made confidential by statute. Payments made public under the UIPA include general state expenses (on the General Fund Report), bid deposit refunds (on the Trust Fund Report), state bond issue construction job expenses (on the Bond Fund Report), airport and public hospital operating expenses (on the Special Fund Report), and State Employment Service operating expenses (on the Employment Security Fund Report). Payments in which there is a significant privacy interest include salary payments and rent supplements (on the General Fund Report), unemployment payments (on the Special Fund Report), and social service reimbursements (on the Employment Security Fund Report). Contract employee salaries can be paid out of any of the four state funds (General, Trust, Bond, and Special), as can priority salary payments to correct payroll warrant errors, employee advances, or new employee salaries.

Our analysis is complicated by the fact that, for the five reports under discussion, there is no way to discern the type of payment a warrant represents. DAGS informs us that the information necessary to determine what a particular warrant

⁵We note that the 1990 Legislature amended section 231-3(10), Hawaii Revised Statutes, to specifically make tax compromise information public. Act 320, 1990 Haw. Sess. Laws 994, 995.

was issued for is contained on supporting vouchers. The Pre-Audit Branch, Accounting Division, DAGS, maintains the vouchers for one year after issuance. For the next five years, they are maintained at the State Archives Records Center, and then they are destroyed. When funds escheat to the State, the vouchers are at least one year old, and will already have been transferred to the Records Center.

Vouchers are filed by voucher number, in eight categories correlating to the Escheated Warrants Reports. Several warrants may be grouped on each voucher. Last year, the Pre-Audit Branch transferred approximately 100,000 vouchers to the Records Center, for calendar year 1989. There are approximately 600,000 total vouchers maintained by DAGS at any one time.

DAGS informs us that there is a separate list of warrant numbers that can be used to look up corresponding voucher numbers. Therefore, it is possible to trace a particular warrant number to its supporting voucher number and then locate the voucher itself, either in the Pre-Audit Branch or at the Records Center, though it would take some time. But because of the tremendous volume of vouchers and the way they are stored, it would be a logistical nightmare to attempt to determine the type of payment represented by every warrant on the five Escheated Warrants Reports. Thus, there appears to be no reasonable means to segregate the public from the confidential entries on the reports.

However, we suggest a more practical resolution to this dilemma. Deleting the report title and the identifying letters at the beginning of each warrant number will allow all five reports to be released to the public. The result will be in compliance with the spirit of the UIPA as well as make public those warrants specifically required by the UIPA to be released.

Significant privacy interests and statutory protections will still be intact because the purpose of each warrant will not be known. Any remaining privacy rights in the names of individuals on the list are outweighed by the public interest in disclosure, thereby "[o]pening up the government processes to public scrutiny." See Haw. Rev. Stat. . 92F-2 (Supp. 1989).

Therefore, we find that after deletion of the report titles and the identifying letters at the beginning of each warrant number, the following five Escheated Warrants Reports are public under the UIPA and must be made available for public inspection and copying: General Fund Escheated Warrants Report, Trust Fund Escheated Warrants Report, Bond Fund Escheated Warrants Report, Special Fund Escheated Warrants Report, and Employment Security Fund Escheated Warrants Report.

CONCLUSION

For the five Escheated Warrants Reports discussed in this opinion letter, individual payees may have a significant privacy interest in their names and the warrant amounts. In addition, some of the information contained in the five reports is protected from disclosure by state statute.

Conversely, some of the information in the five reports is specifically made public by the UIPA. However, very importantly, there is no reasonable way to determine the type of payment every warrant represents.

In order to comply with the UIPA provisions requiring disclosure while recognizing privacy interests and statutory protections, we find that, under the UIPA, the five Escheated Warrants Reports discussed in this opinion letter must be made available for public inspection and copying, after the deletion of report titles and the identifying letters in the warrant numbers.

Martha L. Young
Staff Attorney

KAC/MLY:sc
Attachment

APPROVED:

Kathleen A. Callaghan
Director